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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,743	03/25/2004	Lena Faye Smith Carter		7331

7590

06/14/2005

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EXAMINER

FERNSTROM, KURT

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/809,743

Applicant(s)

SMITH CARTER, LENA FAYE

Examiner

Kurt Fernstrom

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added language pertaining to presentation made "without respect to fingering" is new matter, as this feature was not disclosed in the specification as originally filed.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

Response to Arguments

Applicant's arguments filed on March 17, 2005 have been fully considered but they are not persuasive. New claim 2 has not been presented in single sentence format, rather, the first sentence ends with "range of most melodies/choral parts" and the second sentence begins with "[w]hereby, (a) with knowledge of the number sequence...".

The claim contains numerous instances of language whose meaning is uncertain. It is apparent that applicant is intending to recite a method. As such, the claim should contain clear, precise method steps which can be sequentially followed by a user to achieve the desired result. In step (a), the phrase "with knowledge of the number sequence" is indefinite because it is not clear who has this knowledge, or what the precise method steps are. In step (b), the language "with the use of + and – symbols" is indefinite because it is not clear how these symbols are being used, or where they are being placed. In step (c), it is not clear whether the use of numbers printed on a sheet is to be used with the text sheets, with the hymn sheets or both. Also in claim 3, "traditional hymn-like" is indefinite because the use of subjective terms such as "traditional" and vague terms such as "like" does not allow a user to understand what is being claimed. Parentheses are also not permitted in claims, because it is not clear whether the information contained therein is part of the claimed invention. In step (d), it is not clear what precise method steps are being claimed. Also, the recitation of a presentation made "without respect to fingering considerations" is new matter, as discussed above. Finally, such language as "aids in the rapid reproduction of

melodies/choral parts" describes the intended purpose of the invention, rather than reciting a method step.

It should be noted that the steps a-d are all part of claim 2, and are not dependent claims. Dependent claims have separate numbers, and clearly recite the claim from which they depend. Applicant is advised to review the patents previously cited to see how dependent claims are used to further describe and limit the invention.

The following claim has been drafted by the examiner and considered to distinguish patentably over the art of record in this application, and is presented to applicant for consideration:

A method of providing musical notation to a score, comprising the steps of:
assigning an identifying indicia to each note across a three octave range comprising a left octave, a middle octave and a right octave, wherein indicia ranging from "-1" to "-7" are assigned to notes C through B of the left octave respectively, indicia ranging from "1" through "8" are assigned to the notes C through B of the middle octave and the note C of the higher octave respectively, and indicia ranging from "+1" to "+7" are assigned to the notes D through B of the right octave respectively; and

(b) providing one or more printed music sheets selected from textual and hymnal format, where a musical score is printed on each music sheet and said identifying indicia corresponding to each note of the score is printed with the respective note; whereby the ability to identify each note in a score is aided.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on (571) 272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF
June 10, 2005



**KURT FERNSTROM
PRIMARY EXAMINER**